

Cite as Det. No. 00-089ER, 24 WTD 25 (2005)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Executive)	<u>F I N A L</u>
Reconsideration of the Petition for Refund of)	<u>E X E C U T I V E L E V E L</u>
)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 00-089ER
...)	
)	Registration No. . . .
)	Docket No. . . .

- [1] RCW 82.04.260 -- B&O TAX -- "SEAFOOD" -- "MEAT" -- INTENT AND MEANING. In the absence of clear legislative guidance, the Department must make the best sense of a statute's intent and meaning using those tools that are available, including in this case a memorandum evidencing the evidence of a legislative staff's understanding of the factual circumstances surrounding a proposed amendment and the effect it would have on the then-existing RCW 82.04.260.
- [2] RCW 82.04.260 -- B&O TAX -- "MEAT" & "SEAFOOD" -- DIFFERENT WHOLESALING RATES -- "ESTABLISHED POLICY OBJECTIVE." There is no evidence that any established policy objective is violated by imposing different tax rates on "perishable meat products," which receive a special wholesaling rate under RCW 82.04.260, and "seafood products," whose wholesale sales are taxable under the higher general wholesaling rate provided by RCW 82.04.270.
- [3] RCW 82.04.260 -- B&O TAX -- "PERISHABLE MEAT PRODUCTS" -- "SEAFOOD" -- DEFINITIONS. The Legislature intended the "perishable meat products" and "seafood products" sections of RCW 82.03.260 to be mutually exclusive, and "seafood" will not be considered to be "meat" when sold at wholesale in order to obtain the preferential wholesaling rate provided by RCW 82.04.260's "perishable meat products" section.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

DIRECTOR'S DESIGNEE:

Susan Yvette Price, Assistant Director

NATURE OF ACTION:

A wholesale seller of fresh, frozen, custom cut, and canned seafood argues it is taxable under the special RCW 82.04.260(7) business and occupation (B&O) tax rate as a wholesale seller of "perishable meat products," and is therefore due a refund of taxes paid under the higher Wholesaling B&O tax classification.¹

FACTS:

Bauer, A.L.J. -- Det. No. 00-089, construing the terms "meat" in RCW 82.04.260(7),² and "seafood" in RCW 82.04.260(4),³ was issued on May 17, 2000. The determination held that the term "meat" in RCW 82.04.260(7):

is limited to the flesh of animals, particularly including the flesh of domesticated animals, but excluding fish unless there is a qualifying term to indicate that fish is to be included.

Our reasoning was based on the definition of "meat" in Webster's Third New International Dictionary, Unabridged (Webster's Unabridged Dictionary):⁴

¹meat . . . *n-s* . . . **1 a:** something eaten by man or beast for nourishment ; FOOD <and to every beast of the earth . . . I have given every green herb for ~ -- Gen 1:30(AV)> <it was ~ and drink to him to be the guardian of a secret -- John Buchan> **b:** the edible part of a nut, fruit, or egg <~ of half apple showing tooth marks still fresh, not turned brown -- Leslie Ford> **2. obs :** a particular dish prepared or served as food **3 a:** animal tissue used as food: (1) : FLESH 2b; <preferring ~ to fish> (2) : FLESH 1b; *specif :* flesh of domesticated cattle, swine, sheep, and goats -- distinguished esp. in legal and commercial usage from *meat by-product* and from flesh of other kinds of mammals (3) : the edible soft parts of any animal -- usu. used with a qualifying term <crab~> <the dark ~ of poultry> **b:** meat prepared for the table <spiced ~> <~ loaf> <have another slice of ~> **4: archaic :** any of the usual daily meals; *esp.* DINNER **5 a: archaic :** game animals : QUARRY **b:** favorite or appropriate object of pursuit : principal delight <if you like your stories restrained and nontheatrical, this is your ~ I.T. Marsh> <if a baby hippopotamus was born at the zoo, that was my ~ -- St. Clair McKelway> **6:** food for thought : solid substance : MATTER <this is a volume of first-rate caliber, full of ~ H.L. Hoskins> <the real ~ is found in the last two chapters -- *Times Lit. Supp.*> <to him ideas are not fleshless, misty abstractions but the

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

² On July 1, 1998 RCW 82.04.260 was re-numbered. The manufacturing of "perishable meat products" is now addressed in RCW 82.04.260(4). Because the "perishable meat products" subsection during the period of the refund request was 82.04.260(7), this latter number will be used for purposes of this determination.

³ On July 1, 1998 RCW 82.04.260 was re-numbered. The manufacturing of "seafood products" is now addressed in RCW 82.04.260(1)(b). Because the "seafood products" subsection during the period of the refund request was 82.04.260(4), this latter number will be used for purposes of this determination.

⁴ Merriam-Webster, Inc., MA (1993).

meaning, the ~, and the mainspring action of men -- Kathleen Sproul> 7: *chiefly South & Midland* : PORK; esp : BACON.

We determined that Definitions 1a, 1b, and 2 -- encompassing all food -- are clearly broader than the “meat” definition intended by RCW 82.04.260(7). Definitions 4 and 5a, above, are archaic. Definitions 5b and 6 are too broad, and definition 7, being limited to only certain portions of the country, is too narrow. Thus, having reviewed RCW 82.04.260(4) and (7) in context, Det. No. 00-089 held that Definition 3 of meat was the most descriptive for purposes of RCW 82.04.260(7).

Therefore, under the holding of Det. No. 00-089, we determined that the wholesale sales of fish could not be lawfully reported under the special (i.e., lower) RCW 82.04.260(7) B&O tax rate,⁵ because that section pertained only to “perishable meat products,” the definition of which did not include fish. Although wholesalers of “perishable meat products” were eligible for a special B&O tax rate under RCW 82.04.260(7), wholesalers of “seafood products” did not enjoy a corresponding special wholesaling rate under RCW 82.04.260(4), which pertained specifically to “seafood products.” Therefore, we held that wholesalers of seafood products were required to pay B&O tax under the standard wholesaling rate provided by RCW 82.04.270⁶ and denied Taxpayer’s refund request. Taxpayer petitioned for reconsideration of our denial.

Taxpayer’s initial petition requested refunds for taxes paid on the processing of “fishmeat,” a term it used to refer to the subject of its refund request. We interpreted this word to mean only the flesh of finned fish. Taxpayer’s petition for reconsideration, however, modified its refund request to cover not just “fishmeat,” but all items contained in a comprehensive list of “seafood” products offered for sale to its retail customers. This list contained approximately 1,200 different items. Taxpayer categorizes the items on its list as: “canned seafood,” “fresh seafood,” “custom cut seafood,” and “frozen seafood.” In response to Taxpayer’s reconsideration request, therefore, we are broadening our analysis to include the more comprehensive term “seafood.”

ISSUE:

Whether the special B&O rate in RCW 82.04.260(7), pertaining to “perishable meat products,” applied to Taxpayer’s wholesale sale of fresh, frozen, custom cut, and canned seafood.

DISCUSSION:

During the audit period, RCW 82.04.260 provided, in pertinent subsections, as follows:

(4) Upon every person engaging within this state in the business of **manufacturing seafood products** which remain in a **raw, raw frozen, or raw salted state** at the completion of the manufacturing by that person; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of 0.138 percent.

⁵.138 %.

⁶ Currently .484%.

(7) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing **perishable meat products** and/or **selling the same at wholesale** only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(Emphasis added.) Thus, although the wholesale sale of “perishable meat products” qualified for a special B&O tax rate under RCW 82.04.260(7), there was no corresponding special rate for the wholesaling of “seafood products” under RCW 82.04.260(4).

Taxpayer alleges the following errors in Det. No. 00-089, which we will address as they are presented below:

1. Det. No. 00-089 used an overly narrow subpart of the dictionary definition of “meat.”

Taxpayer notes the term “meat” is not defined in the Revenue Code. Taxpayer urges that the Department should use a more general definition of “meat,” such as “animal tissue used as food” and “flesh.” Taxpayer argues that the first and second definitions in Webster’s should control because they are more “usual and ordinary” than the third, which specifically distinguished fish. Taxpayer argues the term should be defined as the general public defines it, i.e., fish are “animals,” and because their flesh is consumed, they are therefore “meat.” In support of this proposition, Taxpayer has provided us with the definitions of “meat” as contained in a number of dictionaries. Taxpayer sees no basis for distinguishing what flies in the sky from what swims in the water.

On February 19, 2002, Taxpayer raised additional objections, summarized as follows:

- Dictionaries other than Webster's Unabridged Dictionary can and have been used by the Supreme Court in interpreting the ordinary meaning of a word. In one case, the Court used seven different dictionaries to arrive at the plain meaning of words.⁷ Taxpayer argues that the judicial community endorses no one dictionary as an exclusive source for plain meaning definitions. Taxpayer urges the Department to broaden its use of dictionary definitions to include all reasonable interpretations of the ordinary meaning of a word.
- Taxpayer disagrees that the terms “meat” and “seafood,” and their respective subsections in RCW 82.04.260, are necessarily mutually exclusive. Because neither meat nor seafood is clearly defined for purpose of the business and occupation tax, Taxpayer believes there is ambiguity in these two taxing statutes, and they must be construed in favor of taxpayers. Taxpayer rejects the notion that they should be construed narrowly as exemption statutes under Martinelli v. Department of Rev., 80 Wn. App. 930, 940, 912 P.2d 521 (1996).

⁷ Kitsap Co. v. Allstate Ins. Co., 136 Wn. 2d 567, 964 P.2d 1173 (1998).

The Department recognizes that there are many definitions of the word “meat,” and different dictionaries treat these definitions in their own respective ways. Following the lead of the Washington Supreme Court, the Appeals Division uses, whenever possible, Webster’s Unabridged Dictionary as its dictionary reference, and Webster’s Collegiate dictionary and other dictionary definitions as secondary sources. Using Webster’s Unabridged Dictionary, we have looked to the only definition in that resource that fits the context of the statutory language, and that is also consistent with the legislative history and the format of the statute as explained in Det. No. 00-089.⁸ We do not [believe] Taxpayer’s argument that the statute is ambiguous can be sustained in light of the legislative history of the various sections of RCW 82.04.260, which address both “meat” and “seafood” products separately.

Taxpayer itself has described the products at issue as “seafood” in its own submissions and concedes them to be such. We do not believe these products qualify also as “meat” for wholesaling purposes simply because certain dictionary definitions of “meat” might also include seafood. Under Taxpayer’s reasoning, the processing of the meat of nuts or the meat of squash might also qualify, and we do not believe the intent of that term to be so inclusive.

[1] There is no doubt that a “war of dictionaries” would yield multiple results. In the absence of clear legislative guidance, the Department must make the best sense of a statute’s intent and meaning using tools that are available.

On March 6, 2003, Taxpayer advanced the following additional arguments concerning the scope of these terms:

- Taxpayer is a wholesaler, but not a manufacturer, of seafood products. RCW 82.04.260(4), concerning the “manufacturing of seafood,” is not mutually exclusive of RCW 82.04.260(7), concerning the processing and wholesaling of “perishable meat products.” Rather, Taxpayer asserts, RCW 82.04.260(4) (i.e., seafood) is more precisely a subset of RCW 82.04.260(7) (i.e., meat) for manufacturing purposes only. The special B&O rate applicable to both the processing and/or wholesaling of perishable meat products under RCW 82.04.260(7) is a subset of the general manufacturing and wholesaling statutes.
- RCW 82.04.260(4) specifically includes in the definition of manufacturing, the processing of seafood products “which remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing process,” and applies a special B&O rate thereto. RCW 82.04.120, also relating to the B&O tax on seafood, specifically excludes from the definition of manufacturing, “. . . activities which consist of cutting, grading, or ice glazing seafood which has been cooked, frozen, or canned outside the state.” Further, RCW 82.04.240(3) adds that the “cleaning” of fish is not applicable to the manufacturing B&O tax. All of these statutes were

⁸ The first two definitions given are clearly broader than what the statute intended:

1 a: something eaten by man or beast for nourishment ; FOOD <and to every beast of the earth . . . I have given every green herb for ~ -- Gen 1:30(AV)> <it was ~ and drink to him to be the guardian of a secret -- John Buchan> **b:** the edible part of a nut, fruit, or egg <~ of half apple showing tooth marks still fresh, not turned brown -- Leslie Ford> **2. obs :** a particular dish prepared or served as food

drafted in a manner so as to apply to a narrow subset of activities on a narrow subset of products. Such activities are inconsistent with those of Taxpayer and do not apply to the issue at hand. If an activity or a product does not properly qualify under the narrow statute relating to the manufacturing of certain seafood products, it would appropriately be considered under the more general statute relating to the processing of perishable meat products. There is no similar subset statute relating to the wholesaling of certain seafood products, so it would follow that the wholesaling of all seafood products would be taxed under the broader RCW 8.04.260(7) relating to the selling of perishable meat products at wholesale.

- Although the rates are now the same, the favorable discrepancy in the 1983 rates of B&O tax for the manufacturing of certain seafood products (00.15%) -- as opposed to the rate for "perishable meat products" (00.33%) -- supports the position that RCW 82.04.260(4) was enacted as a subsection applicable only to particular activities within the broader statute relating to processing perishable meat products.
- Legislative intent can be explained by events occurring prior to, and approximately simultaneous with the enactment of RCW 82.04.260(4) in 1959. In 1962, the Washington [Supreme Court] found in *Bornstein Sea Foods v. State of Washington*⁹ that, for B&O tax purposes, the filleting of fish is a manufacturing activity. In *Bornstein*, the taxpayer contended that the processing of fish amounted to nothing more than a "mere cleaning of the whole fish," and that the activity was excluded from the definition of "manufacturing" per the explicit language of WAC 458-20-136 (Rule 136). The court found that the filleting of fish was incidental to the manufacturing process and, therefore, was outside the scope of the "cleaning of fish" exclusion in Rule 136. The years at issue in *Bornstein* predated the enactment of the seafood manufacturing statute in 1959, one which would have encompassed the activity of filleting fish and been dispositive of the issue. Taxpayer in this case opines that it is "quite likely" that immediately after *Bornstein* received its tax assessment, it proceeded to bring this issue to the attention of the legislature to seek some future tax relief. Absent any other evidence of legislative intent, the enactment of the law which was, during the audit period here at issue, RCW 82.04.260(4) can be explained as a cure for the inequity of the taxation of a filleter (manufacturer) of raw, raw frozen, or raw salted seafood at the higher general manufacturing B&O tax rate rather than the lower rate availed to the "cleaning" of seafood.

Taxpayer's additional arguments are based on the premise that RCW 82.04.260(4)'s "seafood" statute is merely a subset of a broader treatment of "meat" under RCW 82.04.260(7). However, subsection (7) was not enacted until after subsection (4). We think it unlikely that a subsection (i.e., "seafood") of a broader category (i.e., "meat") would be enacted before a special rate for the broader category was even contemplated, and that the subsection would be a subsection for only limited purposes (i.e., wholesaling, but not manufacturing/processing). For all the reasons enumerated, we conclude that to include "seafood" within the definition of "meat" for the limited purpose of establishing a preferential B&O wholesaling tax rate is not warranted.

⁹ 60 Wn.2d 169, 373 P.2d 483 (1962).

2. Det. No. 00-89 erred by imputing a specific legislative intent to legislative inaction, when it failed to provide specific authority supporting such intent. Taxpayer complains there is no express statement in the legislative history establishing intent to treat the wholesaling of seafood products differently than the wholesaling of other perishable meats. Taxpayer disagrees with Det. No. 00-089's statement:

Had the legislature thought "meat" included "seafood," it would have merely expanded the existing "seafood products" tax classification to include all meat in 1967 instead of adding a distinct new subsection¹⁰

Taxpayer instead suggests that a more reasonable explanation of the 1967 legislation is that the Legislature was hesitant to entirely re-write eight years of established law, and elected instead to simply add a new subsection addressing the taxability of all meats. . . .

In Det. No. 00-089, *supra*, pp.3-4, we noted the following:

RCW 82.04.260(4), the special rate for "seafood products," came into the law in 1959.¹¹ RCW 82.04.260(7), the special rate for "perishable meat products," was not enacted until 1967.¹²

. . . [T]he disparity in times of enactment clearly indicates that "seafood" was considered to be in a class separate and apart from "meat" in 1959 and 1967. Had the legislature thought "meat" included "seafood," it would have merely expanded the existing "seafood products" tax classification to include all meat in 1967 instead of adding a distinct new subsection.

In 1983, the words "only and not at retail" were added to the "perishable meat products" provision.¹³ At that time, the respective tax rates for the manufacture of "seafood products"¹⁴ and "perishable meat products" were "one eighth of one percent" (i.e., 00.125%) and thirty-three one hundredths of one percent" (i.e., 00.33%). Some legislative history . . . exist[s]¹⁵ for this 1983 change in the law. Of particular interest is a May 11, 1983 Memorandum concerning House Bill 72, as amended by the Senate, by a Revenue Analyst for the House of Program Research of the House of Representatives. The memorandum first explained that the words "only and not at retail" had been placed in the original bill, as proposed

¹⁰ Det. No. 00-089, *supra*, p. 4

¹¹ See Section 2, Chapter 211, House Bill 646. The original wording as enacted was identical to today's provision except for the tax rate, which was "one eighth of one percent." It was added to RCW 82.03.260 as subsection (3).

¹² See Section 10, Chapter 149, Engrossed Senate Bill No. 255. The words "only and not at retail" did not exist in the original version of what was originally codified as subsection (8) of the RCW 82.04.260. The original tax rate was "thirty-three one-hundredths of one percent."

¹³ See Section 4, Chapter 55, Substitute Senate Bill No. 72.

¹⁴ At that time respectively codified as RCW 82.04.260(4) and RCW 82.04.260(7).

¹⁵ Archives Division, Washington Secretary of State.

by the Department of Revenue, in order to limit the .33% special rate for meat processing B&O tax to wholesalers

The memorandum also addressed two amendments to the bill that had been proposed by the Senate. The second amendment¹⁶ was described in the memorandum as follows:

b. Amendment [as to] B&O Rate on Wholesale Meat Processors.

This amendment reduces the B&O rate on wholesaling of perishable meat products which are slaughtered, broken or processed by the wholesaler from .33% to .125%. The new rate is the same as that applied to fish and shellfish processing. The justification for this amendment is that meat processors face the same low profit margin as fish processors.

REVENUE IMPACT: \$8,200,000.

(Emphasis added.) Although this proposed change to HB 72 was never enacted, the memorandum's description of it indicates that "seafood" processors were considered by the legislature to be a different category than "perishable meat processors."

This May 11, 1983 memorandum¹⁷ indicates the House Ways and Means Committee understood in 1983 that "meat processors" and "fish processors" were distinct types of taxpayers; that "perishable meat products" and "seafood products," each addressed in discrete subsections of RCW 82.04.260, were separate and dissimilar from one another; and that "perishable meat products" did not include "seafood products." If the term "perishable meat products" had been considered to include the term "seafood products," there would have been two simultaneous rates in 1983 for the processing/manufacturing of "seafood products" – 0.125% under the "seafood products" subsection, and 0.33% under the "perishable meat products" subsection. "A statute is not to be interpreted in such a way that it produces an absurd result or renders meaningless its enactment." *Kirk v. Moe*, 114 Wn.2d 550, 554, 789 P.2d 84 (1990).

Taxpayer urges that the Department has erred in its use of a memorandum written by a staff person of a House subcommittee as indicative of the legislative intent of RCW 82.04.260(7). Although Taxpayer concedes that the memorandum, as an extrinsic aid, is informative to a point, Taxpayer argues that its usefulness is limited because it was merely presented to the House Ways and Means Committee, was never heard by the entire legislature, and the bill involved was never enacted into law. Taxpayer further believes the Department errs in imputing a specific legislative intent to legislative inaction.

¹⁶ The first not being pertinent to this analysis.

¹⁷ This memorandum was written by a Revenue Analyst employed by the Office of Program Research (OPR), the non-partisan staff of the House of Representatives. The Revenue Analyst had been assigned by OPR to the House Ways and Means Committee. The memorandum was addressed to Representative Tilly, one of HB72's original sponsors.

Noting Taxpayer's concern in this regard, we must take the memorandum as the only available evidence of the legislative staff's understanding of the factual circumstances surrounding the proposed amendment and the effect of the existing statute. The Department imputes no legislative intent to the fact that the amendment was not favorably acted upon. Taxpayer's petition as to this issue is denied.

3. Det. No. 00-089 erred by taking administrative notice of religious practice as a basis for interpreting a state taxing statute, and by incorrectly characterizing Catholic Canon law.

In its petition, Taxpayer argued that a vegan would think of fish as a meat and, therefore, it was implied we should do likewise. Determination No. 00-089, without citing Catholic Canon law, merely noted the tradition of "meatless" Fridays (extending into the 1960's) on which days fish was routinely served in lieu of "meat" in households of certain liturgical Christian faiths for many years. This example was raised merely to demonstrate that diverse segments of the population might differ in how they define the word "meat," and that just because a vegan believes fish constitutes meat is not necessarily dispositive of the issue.

[2] 4. Det. No. 00-089 erred in advocating a tax treatment that taxes wholesalers of fish differently than wholesalers of other types of meat. Taxpayer's petition contends that "established policy objectives" are not served by the inconsistent treatment of meat and fish, citing the legislative goal of ensuring equitability and fairness in the administration of the B&O tax. Taxpayer notes that both seafood and meat processors/dealers operate with low profit margins.

The legislature has, for various policy and economic reasons, historically subjected different industries to differing tax rates. Taxpayer has offered no evidence of "established policy objectives" that impact on the tax rates between seafood and meat products. Indeed, the legislative history quoted above concerning 1983's HB 32 demonstrates that, often, the legislature deems not to act in a consistent manner toward similarly-situated, but not identical, taxpayers. Det. No. 00-089 does not advocate a tax treatment. Rather it interprets what the legislature intended. If Taxpayer believes the adopted policy is unfair and inconsistent, such objections must, of necessity, be directed to the Legislature.

5. Det. No. 00-089 erred by failing to consider whether Taxpayer's seafood products sold at wholesale were "perishable." The question of the perishability of Taxpayer's fresh, frozen, and canned seafood is raised only if the seafood is considered to be meat. This issue is not considered because we have held that seafood is not a meat product.

6. Det. No. 00-089 erred in its reasoning that, if the term "meat" includes "fish," this could potentially lead to the processing of seafood being simultaneously taxable under both RCW 82.04.260(4) and RCW 82.04.260(7) with potentially different tax rates, and that this could not have been what the legislature intended. Taxpayer argues that the structure of the law is such that imposing tax on the manufacture (but not wholesaling) of seafood at RCW 82.04.260(4) does not preclude taxing wholesale sales of seafood at RCW 82.04.260(7). Taxpayer argues that different taxes, as enacted under different statutes, apply to different steps

in bringing a product to market. Taxpayer notes that specific and distinct excise taxes apply to manufacturing, wholesaling, and retailing.

Taxpayer further notes that there are other instances within chapter 82.04 RCW where issues of statutory construction arise where different tax rates on the same activity could apply. For example, Taxpayer points to RCW 82.04.270(1), which imposes the general, wholesale tax rate of 0.484% on all wholesale transactions with the sole exception of products included in RCW 82.04.260(1) or (8).¹⁸ Despite the apparent limitation under RCW 82.04.270(1), another exception from the general rate imposed on wholesale transactions is explicitly included in RCW 82.04.260(7), an exception that has long been accepted by the Department. In other words, because the wholesale sale of meat products under RCW 82.04.260(7) is not explicitly excepted out of RCW 82.04.270(1), the wholesale sale of meat products could theoretically be taxed twice on the same transaction. Therefore, under Taxpayer's analysis, the sales of any products receiving a special wholesaling tax rate under RCW 82.04.260 would be potentially subject to not only the special wholesaling B&O tax rate under RCW 82.04.260, but also the higher wholesaling B&O tax rate under RCW 82.04.270.

Given the above analysis, Taxpayer argues that the ambiguity in RCW 82.04.260 as to the applicable tax rate for wholesalers of perishable meat products should be resolved in Taxpayer's favor. However, standard rules of statutory construction mandate a different result:

The rules of statutory construction require that when possible the various provisions of an act be harmonized; this usually arises within particular statutory chapters. See State v. Williams, 62 Wn. App. 336, 338, 813, P.2d 1293, review denied, 117 Wn.2d 1027 (1991) (harmonizing RCW 10.05.140 and RCW 10.05.160). In seeking to harmonize provisions of a statute, there may arise conflicts between general provisions and specific exemptions. This may result in an apparent conflict between the rules of statutory construction, which provide that doubts regarding the construction of a tax statute are to be construed against the taxing power and also that tax exemptions are to be strictly construed in favor of the tax and may not be extended beyond the scope intended by the Legislature. In addressing this apparent conflict the Court of Appeals recently stated that:

¹⁸ We note that the language of the latest enactments of RCW 82.04.270¹⁸ now except only RCW 82.04.260(5) – i.e., the wholesale sale of nuclear fuel assemblies – from the standard wholesaling B&O tax rate

In resolving the apparent conflict between these two rules of statutory



construction, it is useful to return to the standard maxim that a specific statute controls a general one. Using this maxim, the rule requiring narrow construction of tax exemptions addresses a more specific area of tax law than does the general requirement that where there is an ambiguity in the statute, it is construed against the taxing authority.

Martinelli v. Department of Rev., 80 Wn. App. 930, 940, 940, 912 P.2d 521 (1996).

See Det. No. 99-238, 18 WTD 466 (1999). Therefore, in the case of ambiguity between the wholesaling application of RCW 82.04.270 and RCW 82.04.260, the more specific provisions of the latter will apply because that provision specifically addresses more precisely the products which are sold.

[3] As to Taxpayer's claim of ambiguity between subsections (4) and (7) of RCW 82.04.260, it is the position of the Department that the Legislature intended RCW 82.04.260(7) to apply specifically only to "perishable meat products," and RCW 82.04.260(4) to apply specifically only to "seafood products," and that these two subsections are mutually exclusive. This is because RCW 82.04.260(7) provides a special rate for the "manufacturing" of perishable meat products, and RCW 82.04.260(4) provides a special tax rate for the "processing" of seafood products. If one "processes" a product, one is essentially "manufacturing" that product under the RCW 82.04.120 definition of "manufacturing."¹⁹ If "seafood products" also came within the definition of "perishable meat products," any activity constituting their manufacture/processing would be potentially taxable under both subsections (4) and (7) of RCW 82.04.260, thus creating an ambiguity between potentially different tax rates.²⁰ Under the above *Martinelli* analysis, the

¹⁹ "To manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use, and shall include:

²⁰ Although we note that, today, the tax rates for both are identical.

correct way to resolve the ambiguity is to hold that subsection (7) pertains only to “perishable meat products,” and subsection (4) applies to “seafood products.”

Taxpayer’s petition as to this issue is denied.

DECISION AND DISPOSITION:

Taxpayer’s petition for reconsideration is denied, and no refund is granted.

Dated this 31st day of July 2003.